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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,496	03/23/2004	Michael Saigh	AUTOCART	4385
34534 7590 04/09/2008 KEVIN LYNN WILDENSTEIN 9400 HOLLY AVENUE NE BUILDING 4H ALBUQUERQUE, NM 87122				
EXAMINER SHAPIRO, JEFFERY A				
ART UNIT		PAPER NUMBER		
3653				
MAIL DATE		DELIVERY MODE		
04/09/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/807,496

Applicant(s)

SAIGH ET AL.

Examiner

JEFFREY A. SHAPIRO

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 44-123 is/are pending in the application.
- 4a) Of the above claim(s) 52-55, 58, 77, 78, 83, 90, 105-108, 111 and 118 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44-51, 56, 57, 59-64, 66-76, 80-82, 84-89, 91-104, 109, 110, 112-117 and 119-123 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 5/9/07
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, directed towards Claims 44-51, 56-57, 59-64, 66-76, 80-82, 84-89, 91-104, 109-110, 112-117 and 119-123, in the reply filed on 12/17/08 is acknowledged. The traversal is on the ground(s) that the inventions in Groups II-IV are not "independent and distinct" from the invention claimed in Group I. This is not found persuasive because Independent Claim 44 and Dependent Claims 46, 51, 71, 76, 99, 100 and 103, are considered evidence claims illustrating that the particulars of Group II, directed to Claims 53, 78 and 1-6, Group III, directed towards Claims 52, 54, 55, 58, 77, 79, 83, 105, 107, 108 and 111 and Group IV, directed towards Claims 65, 90 and 118 are not required for patentability.

The requirement is still deemed proper and is therefore made FINAL.

Specification

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 44-51, 56-57, 59-64, 66-76, 80-82, 84-89, 91-104, 109-110, 112-117 and 119-123 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. The cited claims are replete with unclear language. Some examples include:
6. Claim 44: The term "introducing" is unclear.
7. Claims 49, 57, 64, 97 Improper Markush Group. Should use the phrase "from the group consisting of..."
8. Claims 50; The term "any tenant" or "at least one tenant" lacks antecedent basis.
9. It is suggested that all claims be amended accordingly so as to conform to U.S. practice.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 44-51, 56-57, 59-61, 66-76, 80-82, 84-85, 91-104, 109, 110, 112-114, and 119-123 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kipp (US 5,890,136) in view of Domain et al (US 5,158,155).

12. Regarding Claims 44, 80, 85, 96, 99, 100, Kipp discloses a structural facility (16), as illustrated in figure 5, that receives and distributes items, including a central order processing portion, a plurality of drive-through pick up areas (14), a central, i.e., core computer (20) that communicates with customers through communications system (18).

13. Further regarding Claim 96, note that the last four lines are considered conditional language which does not further limit the claim since these conditions may never occur. The last six lines of Claim 99 similarly are non-limiting.

14. Regarding Claim 44, Kipp does not expressly disclose, but Domain discloses a computer-controlled traffic optimization system for the purpose of optimizing traffic flow through a drive-up retail facility. See Domain, col. 5, lines 40-61.

15. Regarding Claim 45, Domain further discloses plural staging lanes (14) in communication with the core computer system.

16. At the time of the invention, it would have been obvious to one of ordinary skill in the art to have added a computer-controlled traffic optimization system, as taught by Domain, in Kipp's drive-through retail facility, for the purpose of optimizing traffic.

17. Regarding Claims 46, 71, Kipp discloses an order placement and delivery station (24).

18. Regarding Claim 47, note that Kipp's station (24) receives items on conveyor (44).

19. Regarding Claims 48, 49, 73 and 74, 97, 101, Kipp's station (24) communicates by hardwired or wireless means with the central (core) computer. See Kipp at col. 4, line 62-col. 5, line 25.

20. Regarding Claims 50, 75, 103, note that Kipp's communication means includes pre-ordering/sale information. See Kipp at col. 7, lines 30-40.
21. Regarding Claims 51, 56, 57, 76, 81, 82, 98, 104, 109, 110, Kipp's pre-ordering means verifies customer orders and identification, as mentioned at col. 6, lines 25-29 and 45-63. Note that biometrics are disclosed at lines 45-47.
22. Regarding Claims 59, 60, 61, 102, 112, 113, 114, official notice is taken that it would have been obvious to incorporate an area to handle special goods, provide refunds, receive returns or handle customer queries/customer service, as typical retail establishments are well-known to have such an area.
23. Regarding Claims 66-70, 91-95, 119-123, note that Kipp's structural facility is "adapted" to be attached to any other desired structure, such as a strip mall, box store, outdoor mall, indoor mall or other structure.
24. Regarding Claim 72, note that service items are considered functional equivalents of other items. Regardless of the item, Kipp's apparatus is adapted to handle service or other items.
25. Claims 62-64, 86-89, 115-117, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kipp (US 5,890,136) in view of Dickson (US 6,810,304 B1).
26. Kipp discloses the drive-through retail structure as described above.
27. Kipp does not expressly disclose, but Dickson discloses a food area (22) with a food prep area (40), as illustrated in figure 1 of Dickson, for the purpose of expanding retail offerings in order to increase sales and thus profits.

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28. At the time of the invention, it would have been obvious to one of ordinary skill in the art to have added a food area with food prep area, such as a restaurant, as taught by Dickson, in Kipp's drive-through retail facility, for the purpose of expanding retail offerings and increasing profits.

29. Official notice is taken that such food areas require refrigerated areas as well as environmental controls, for example.

30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY A. SHAPIRO whose telephone number is (571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick H. Mackey can be reached on (571)272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey A. Shapiro/
Primary Examiner, Art Unit 3653

March 31, 2008